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No. 01-419

In The

Supreme Court of the United States

CITY OF COLUMBUS, *et al.*,

Petitioners,

vs.

OURS GARAGE AND WRECKER SERVICE, INC., *et al.*,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF OF THE CITY AND COUNTY OF SAN FRANCISCO, 17 CITIES, AND 6 ORGANIZATIONS AS AMICI CURIAE SUPPORTING PETITIONER CITY OF COLUMBUS

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QUESTIONS PRESENTED

Amici will address the following questions:

1. Are local governments better suited than states to regulate the safety of motor vehicles, particularly with respect to towing and roads?

2. Does the Sixth Circuit's construction of the Safety Exception in the Federal Aviation Administration Authorization Act, under which states can no longer delegate to localities certain regulatory authority, violate the Tenth Amendment?

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INTEREST OF AMICI CURIAE[1]

Amicus curiae City and County of San Francisco, joined by 17 cities, submit this brief in support of petitioner City of Columbus under Supreme Court Rule 37.4. The cities are joined by six organizations whose members include state, county, and municipal governments and officials throughout the United States.[2]

This case is about whether in deregulating the motor carrier industry, Congress intended to preclude states from delegating to local governments the authority to regulate motor vehicle safety. The Sixth Circuit held that states may not delegate this regulatory authority to cities and counties.

If this Court upholds the decision, Amici will be powerless to protect their citizens from hazardous conduct and conditions related to motor vehicles, even when their states have determined that the localities are in the

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[1] Under Supreme Court Rule 37.3(a), the parties have consented to the filing of this amicus curiae brief on behalf of the California State Association of Counties, the Council of State Governments, the International City/County Management Association, the International Municipal Lawyers Association, the National Association of Counties, and the National League of Cities. Their letters of consent have been filed with the Clerk of the Court.

Under Supreme Court Rule 37.6, Amici state that no counsel for a party has authored this brief in whole or in part, and no person or entity, other than amici, their members, or their counsel, has made a monetary contribution to the preparation or submission of this brief.

[2] *See* Amici listed on previous pages.

better position to protect the public. Because of the profound effect that the Sixth Circuit's holding would have on local governments throughout the country, Amici cities and organizations have a significant interest in presenting their views to the Court.

SUMMARY OF ARGUMENT

Two traditional functions of local governments have been to protect their citizens and to regulate the use of their streets. States have delegated their authority to regulate these areas because it is logical for localities to exercise these functions. Local lawmakers hear firsthand the needs and concerns of their communities, and can respond by enacting appropriate legislation. Local law enforcement officers are best able to enforce such legislation. The Sixth Circuit's ruling turns tradition on its head by eliminating cities' abilities to ensure that their streets are safe.

Congress could not have meant for the deregulation of the motor carrier industry to result in states being compelled to adopt an entirely new layer of legislation over areas that traditionally have been left to localities. In fact, if Congress intended to burden states in this manner, it has "invade[d] the province of state sovereignty reserved by the Tenth Amendment." *See New York v. United States*, 505 U.S. 144, 155 (1992).

Amici urge this Court to reverse the Sixth Circuit's holding. Adopting safety regulations with respect to motor vehicles is a critical function that is best performed by local jurisdictions. And under the Tenth Amendment,

states should not be compelled to regulate an area that they have delegated to cities and counties.

ARGUMENT

THE SIXTH CIRCUIT ERRED IN CONCLUDING THAT STATES MAY NOT DELEGATE THEIR SAFETY REGULATORY AUTHORITY OVER MOTOR VEHICLES.

In 1994, Congress deregulated motor carriers through passage of the Federal Aviation Administration Authorization Act of 1994, as amended by the Interstate Commerce Commission Termination Act of 1995, codified at 49 U.S.C. § 14501 ("FAAAA"). The FAAAA preempts the enactment or enforcement of any law related to the price, route, or service of motor carriers. Congress included three exceptions to preemption. The one at issue in this case provides that the preemption provision

> shall not restrict the safety regulatory authority of a State with respect to motor vehicles, the authority of a State to impose highway route controls or limitations based on the size or weight of the motor vehicle or the hazardous nature of the cargo, or the authority of a State to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization.

Section 14501(c)(2) (the "Safety Exception").

Ohio has granted to the localities within its borders the authority to regulate, among other things, local tow

truck operations and the use of streets within their jurisdictions. Petition for Writ of Certiorari at 4-5, *City of Columbus v. Ours Garage and Wrecker Service, Inc.*, No. 01-419. Under this authority, Columbus passed a towing ordinance "which among other things requires the owners and operators of tow trucks to obtain a license from the City, maintain insurance, and comply with other regulatory requirements." *Ours Garage and Wrecker Service v. City of Columbus*, 257 F.3d 506, 507 (6th Cir. 2001), *cert. granted*, 70 U.S.L.W. 3426 (U.S. Jan. 2, 2002) (No. 01-419).

In a two-paragraph opinion, the Sixth Circuit held that the FAAAA preempts Columbus' towing ordinance. The court permanently enjoined Columbus from enforcing its towing ordinance, stating that *Petrey v. City of Toledo*, 246 F.3d 548 (6th Cir. 2001), controls the disposition.

In *Petrey*, the Sixth Circuit held that none of the exceptions to preemption found in the FAAAA saved the local towing licensing scheme from preemption. *Id.* at 564. With respect to the Safety Exception, the court held that Congress did not intend for that exception to apply to municipalities. *Id.* at 560-61. The court based this holding on the statutory language of the FAAAA, finding that the omission of the term "political subdivisions" in the Safety Exception means that municipal safety regulation is not exempted from preemption. *Id.* at 562-63. The court also concluded that legislative history and purpose supported its holding. *Id.* at 563.

By holding that the Safety Exception does not apply to municipalities, the Sixth Circuit has stripped Ohio of

its power to authorize its local governments to pass safety regulations affecting motor vehicles.

Divesting cities across the country of their ability to regulate commercial tow operators within their borders will allow unscrupulous operators to wreak havoc on public safety. But the implications of the Sixth Circuit's holding go well beyond the towing industry. The decision leads to the untenable result that local governments cannot perform their traditional regulatory function of ensuring that their streets are safe for all who travel on them.[3] Motor carriers will be free to disregard municipal laws regulating the direction that traffic must flow on their streets, the routes that vehicles carrying hazardous substances may use, the size of vehicles that may travel on particular streets, and speed limits.[4]

The Sixth Circuit's decision was wrong for two reasons. First, the decision fails to recognize that local governments can regulate the safety of motor vehicles more effectively than states can. Second, the Sixth Circuit's

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[3] *See California Dump Truck Owners Assoc. v. Davis*, 172 F. Supp.2d 1298 (E.D. Cal. 2001) (finding, based on cases decided in the towing context, 12 California statutes that delegate authority to regulate local roads to cities and counties are preempted by the FAAAA.)

[4] For example, one city in California has already been sued to stop enforcement of local safety regulations of its streets, based on the plaintiffs' contention that the FAAAA preempts the local ordinance. The plaintiffs are professional truck drivers, who are seeking to enjoin enforcement of Fremont Municipal Code sections restricting vehicles in excess of 10,000 pounds from certain city streets. *Devenceze v. City of Fremont*, No. C-02-0046-JL (N.D. Cal., filed Jan. 3, 2002).

interpretation of the Safety Exception violates the Tenth Amendment to the United States Constitution.

I. LOCAL GOVERNMENTS ARE BEST ABLE TO REGULATE SAFETY ASPECTS OF MOTOR VEHICLES.

States have traditionally delegated to municipalities and other local governmental bodies the regulation of motor vehicles. Berkeley Davids, *The Law of Motor Vehicles* § 24 at 26 (1911). *See also,* Charles J. Babbitt, *The Law Applied to Motor Vehicles* § 30 at 16 (4th ed. 1933); 1-2 Xenophon P. Huddy, *Encyclopedia of Automobile Law* § 68 at 210 (9th ed. 1932). Local governments are in the best position to efficiently and accurately determine what laws are necessary to protect the safety of their citizens. The issues faced by a small rural community are not the same as those faced by a large urban center. Safety hazards on mountainous roads are different than those on long flat surfaces. Statewide laws cannot possibly take into account all of the peculiarities of its cities and counties to adequately protect the public. To force the states to try to do so would impose an extreme burden on states and a drain on their resources.

A. States must be able to delegate to local governments regulatory authority over tow-trucks.

Cities throughout the country have enacted local towing ordinances to protect their citizens from

unscrupulous practices of tow truck operators.[5] Without such controls, a person with a tow truck wields unlimited power to take unfair advantage of and threaten the safety of vulnerable citizens. For this reason, "municipal regulation of the business of towing is not unusual." *Interstate Towing Assoc., Inc. v. City of Cincinnati,* 6 F.3d 1154, 1165 (6th Cir. 1993). Towing regulations serve important municipal interests to "promote the public safety and consumer confidence in the regulated services." *Id.* at 1164. As the Washington Supreme Court found in *Crane Towing, Inc. v. Gorton,* 89 Wash.2d 161, 169-70 (1977):

> It cannot be doubted that the unexpected loss of the use of one's vehicle directly affects the safety and welfare of vehicle operators and owners. A person may be stranded hundreds of miles from home with no alternative mode of return travel and with no place to stay until the vehicle can be recovered. Similarly, the loss of one's vehicle may substantially affect one's employment. Legislation which tends to assist members of the public from involuntarily losing the use of their vehicles and which tends to

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[5] See, e.g., *Petrey v. City of Toledo,* 246 F.3d 548; *Tocher v. City of Santa Ana,* 219 F.3d 1040 (9th Cir. 2000), *cert. denied,* 531 U.S. 1146 (2001); *Ace Auto Body & Towing, Ltd. v. City of New York,* 171 F.3d 765 (2nd Cir.), *cert. denied,* 528 U.S. 868 (1999); *R. Mayer of Atlanta, Inc. v. City of Atlanta,* 158 F.3d 538 (11th Cir. 1998), *cert. denied,* 526 U.S. 1038 (1999); *Northway Towing, Inc. v. City of Pasadena, TX,* 94 F. Supp.2d 801 (S.D. Tex. 2000); *Cedar Bluff 24-Hour Towing, Inc. v. City of Knoxville,* 78 F. Supp.2d 725 (E.D. Tenn. 1999); *Harris County Wrecker Owners For Equal Opportunity v. City of Houston,* 943 F. Supp. 711 (S.D. Tex. 1996); *Brumfield Towing Service, Inc. v. City of Baton Rouge,* 911 F. Supp. 212 (M.D. La. 1996).

> expedite recovery of their vehicles once they have been removed fairly and clearly promotes the safety and welfare of the public.

The necessity of safety regulations cannot be overstated. Recent events in Texas provide a stark example: The City of San Antonio had regulated and controlled "the practice of tow truck drivers from racing to the scenes of accidents." *Stucky v. City of San Antonio*, 260 F.3d 424, 437 (5th Cir. 2001). The regulation was meant to protect the public peace, safety and welfare, by preventing safety hazards at the scene of the accident that result from multiple tow trucks rushing to the scene and adding to the traffic problems already created by the accident. *Id.* at 438 n.17. The Fifth Circuit Court of Appeals struck down San Antonio's ordinance, holding that the State of Texas could not delegate its safety regulatory authority to municipalities. *Id.* at 446.

Within one week after the decision in *Stucky*, two accidents occurred in Houston involving speeding tow trucks. Thom Marshall, *Racing Tow Trucks Pose Wreck Risks*, Hous. Chron., Aug. 9, 2001. One of the accidents was fatal, and the other resulted in 18 injuries. *Id.* During that same week, 38 tow trucks showed up at one accident scene. *Id.*[6]

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[6] The problems experienced in Houston are not atypical. *See, e.g.*, Editorial, Denv. Post, Jan. 31, 1997, at B-08 (describing hazards of tow operators racing to accidents, and noting two deaths caused by speeding tow trucks). *See also* Brian Meyer, *New Rules to Target Tow Truck Operators*, Buff. News, March 12, 2001, at 1A (reporting that city officials enacted new tow laws to protect victims and decrease wreck chasing); Gromer Jeffers Jr., *Committee Endorses Plan to Regulate Tow Trucks*, Kan. City Star,

City and county governments are in better positions than state governments to enact regulations tailored to prevent the type of accidents that occurred in Texas. For example, cities know whether regulations aimed at limiting tow truck drivers from rushing to accidents are necessary because cities can track accidents involving tow trucks. *See Stucky v. City of San Antonio*, 260 F.3d at 437 n.16. Local governments are also the more appropriate bodies to administer permitting schemes for tow truck operators within their jurisdictions. Local law enforcement officers are likely to receive complaints about tow truck operators, and should be able to take direct action

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Feb. 17, 2000, at B1 (same); *N.O. Bans Tow Truck Wreck-Chasing*, Times-Picayune, April 1, 1999, at B3 (same); Christopher Lopez, *City Council Poses Tow-Truck Regulations*, Denv. Post, May 8, 1996 at B-03 (describing reason for Denver City Council's personnel and public safety committee considering new tow regulations to be in response to towing "free-for-all" in which tow operators conduct unnecessary and unwarranted tows and charge exorbitant fees); Mark Belko, *Ferlo Revises Tow Truck Industry Regulation Bill*, Pitt. Post-Gazette, Feb. 2, 1995 at B5 (describing new bill by Council president as regulating towing "as an effort to prevent people from being ripped off by unscrupulous operators" and to protect vulnerable people); Miguel M. Salinas, *Regulation Ends, Competition Begins for Towing*, Austin Am. Statesman, Jan. 1, 1995 (City/State Section) (reporting that Austin police and tow truck companies are preparing for "wrecker wars" and "chaotic" collision scenes in wake of deregulation of the industry); Howard Altman, *Towing . . . Towing . . . GONE*, Feb. 22-29, 1996 <*http://citypaper.net/articles/022296/article032.shtml*> (describing tow operators who "chase" accidents, tow disabled vehicles, then charge higher fees than were disclosed at the accident scene, or increase the damage to a vehicle to increase the price of the repair, which will increase the amount of money they get from the auto repair shop).

in response to such complaints. Local governments can also more easily monitor whether tow truck operators are complying with requirements aimed at protecting the public safety than a statewide agency, which would be charged with monitoring the activities of every tow operator within the entire state.

The experience of one driver in San Francisco highlights the relevance and importance of local regulation and enforcement of tow trucks. The driver was stranded late at night at the parking lot where he had earlier parked his car, which was now missing. *People ex rel. Renne v. Servantes*, 86 Cal.App.4th 1081, 1091-92 (Ct. App.), *petition for cert. filed*, 70 U.S.L.W. 3162 (Aug. 14, 2001) (No. 01-336). After tracking down the company that had towed his vehicle, the man took a taxi to a desolate, industrial area of town where the company's tow yard was located. *Id.* Out of concern for his safety, he paid the taxi driver to stay at the yard with him while he waited for the tow operator to arrive and release his car to him. *Id.* He ran out of money after 20 minutes, the taxi left, and the man waited for almost an hour alone. *Id.* When the tow operator finally arrived, he refused to accept a credit card for payment of the tow. *Id.* The tow operator drove the towed driver to an automated teller machine, where the driver had to withdraw the cash to pay for the tow. *Id.*

San Francisco's tow ordinances, which require tow operators to, among other things, obtain a permit from the Chief of Police, notify the City's tow desk upon conducting a tow, maintain records of towed vehicles, and accept cash, check, or credit card in payment for services, are aimed at protecting the safety of San Francisco's citizens like the driver in the above example.

B. States must be able to delegate to local governments regulatory authority over roads.

States have also deemed it appropriate to delegate to local governments the safety regulatory authority over motor carriers in contexts other than towing.[7] Under this authority, cities ensure their roads are safe by adopting use restrictions on a street-by-street basis.[8]

Common restrictions that localities impose on roads within their jurisdictions include speed limits, prohibitions against turns at red lights, weight restrictions, height restrictions, and one-way direction of travel restrictions. Detailed findings are necessary to develop regulations that are appropriate and reasonable. For example, factors that must be considered to determine the proper speed limitation on a street include, among other things: (1) prevailing vehicle speeds; (2) spacing of intersections; (3) restricted sight distances or view obstructions; (4) long, steep downgrades or hills; (5) accident experience; (6) traffic volumes; and (7) vehicle-pedestrian conflicts. Institute of Transportation Engineers, *Traffic*

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[7] For example, California has at least 10 statutes that authorize local authorities to pass regulations related to the safety of motor vehicles on roads within their jurisdictions under specified circumstances. Cal. Veh. Code §§ 21100(b)-(c), 35100(c), 35401(d)-(e), 35404, 35700, 35701, 35707, 35712, 35715, 35717 (2000); Cal. Sts. & High. Code §§ 942-942.5 (1990).

[8] *See, e.g.* San Francisco, Cal., Traffic Code §§ 28.1-28.1.106 (2000) (listing 106 streets in San Francisco on which it is unlawful to operate a vehicle in excess of 6,000 pounds); San Francisco, Cal., Traffic Code §§ 174-178.09 (2001) (establishing speed limits on 96 streets in the city).

Engineering Handbook 348 (James L. Pline, ed., 4th ed. 1992).

Moreover, it is easy to understand why the route of a higher, wider, longer, or heavier than standard vehicle must avoid streets with low utility lines, low tunnels, narrow streets, or steep grades. Local traffic engineers know which streets have these conditions, and by regulation and permitting can safely guide extra-large vehicles through a town or city.

A state cannot make the requisite detailed findings as to the necessity of safety regulations of every road or street within its borders.[9]

These determinations are best left to local officials, who are familiar with the intricacies of their roads. Without the authority to exercise control over how motor carriers use their roads, cities and counties are unable to perform this very essential function.

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[9] *See, e.g.*, Rodney White, *Change in U.S. Law Clears Road to Open New Tow Business*, Morning Journal (Martinsburg, WV), Jan. 7, 1995 at A1 (noting that residents of "coal-producing counties where large 18-wheelers are used to haul coal from remote mining sites to rail heads and river barge companies" complain that "the state doesn't do enough to stop the owners and operators of these trucks from carrying overweight loads that destroy roads").

II. THE SIXTH CIRCUIT'S INTERPRETATION OF THE SAFETY EXCEPTION VIOLATES THE TENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

Under the Sixth Circuit's interpretation of the Safety Exception, states must either assume responsibility for adopting statewide safety regulations covering all streets and all tow operators within the state, or abdicate that responsibility and leave the states' residents with no motor vehicle safety regulations at all. Interpreted this way, the Safety Exception violates the principles of dual sovereignty protected by the Tenth Amendment, because Congress is effectively mandating how states govern the area of motor vehicle safety.[10]

It is "fundamentally incompatible with our constitutional system of dual sovereignty" for the federal government to "issue directives requiring the States to address particular problems." *Printz v. United States*, 521 U.S. 898, 935 (1997). Thus, "[w]hile Congress has substantial powers to govern the Nation directly, including in areas of intimate concern to the States, the Constitution has never been understood to confer upon Congress the ability to require the States to govern according to Congress' instructions." *New York v. United States*, 505 U.S. at 162 (citation omitted). "[E]ven where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power directly to

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[10] The Tenth Amendment to the United States Constitution provides: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

compel the States to require or prohibit those acts." *Id.* at 166. "The allocation of power contained in the Commerce Clause, for example, authorizes Congress to regulate interstate commerce directly; it does not authorize Congress to regulate state governments' regulation of interstate commerce." *Id.*

Congress may encourage a state to adopt certain regulations that are consistent with federal interests. *Id.* at 171-174. But such encouragement is constitutionally valid only if states have a choice of whether to institute those regulations. *Id.* at 174. *See also F.E.R.C. v. Mississippi*, 456 U.S. 742, 764-65 (1982) (upholding mandate to states to consider federal standards, where nothing compelled states to enact legislation). Otherwise, states lose "an essential attribute of [their] retained sovereignty [-] that they remain independent and autonomous within their proper sphere of authority." *Printz v. United States*, 521 U.S. at 928. (citation omitted.)

For example, in *New York v. United States*, the Court considered the constitutionality of three provisions of the Low-Level Radioactive Waste Policy Act. In those provisions, Congress sets forth a series of incentives to states to provide for the disposal of the radioactive waste generated within their borders. *New York v. United States*, 505 U.S. at 150-51. This Court upheld the two sets of incentives that provided states with a true choice. In the first, the states could choose between regulating according to the federal plan or foregoing federal funds. *Id.* at 173. The second permissible incentive provided that states "may either regulate the disposal of radioactive waste according to the federal standards . . . , or their residents who

produce radioactive waste will be subject to federal regulation." *Id.* at 174.

In contrast, this Court struck down the third incentive in the statute. Under that provision, a state could either regulate consistent with the federal plan, or take title to the radioactive waste within its borders, and would be subject to damages for failing to do so promptly. *Id.* at 174-75. Because both options under the third alternative were "coercive regulatory techniques," the Court found that states were not provided with a choice of whether to accede to federal regulation. *Id.* at 176.

Congress has specifically absolved itself of the responsibility for protecting the public with respect to motor vehicles. 49 U.S.C. § 14501(c)(2). Rather, Congress has left it to the states to protect the public in this critical area. *Id.*

Under the Sixth Circuit's interpretation of the Safety Exception, however, Congress has coerced the states to regulate the safety of motor vehicles in a particular manner – that is, on a statewide rather than local basis. Congress has taken away the ability of the states to fulfill their obligation with the approach that each state deems is in the best interests of its citizens, and respects the views of the local electorate. *See New York v. United States*, 505 U.S. at 168-69. Accordingly, states may no longer exercise their authority by determining that its localities are in the better position to decide what regulations are necessary, or that the resources that would be required to institute intricate safety regulations statewide are better spent on other priorities.

This interpretation leaves states with two alternatives. The first is to do nothing. But not adopting any regulations related to the safety of motor vehicles "is no choice at all." *Id.* at 176. That "alternative" would leave tow-truck operators entirely unregulated, and roads entirely unrestricted.

Therefore, the only real alternative available to states under the Sixth Circuit's ruling is to adopt, on a state level, new extensive, detailed laws on subjects that are otherwise best left to local regulation. States would have to institute statewide licensing schemes for tow operators, to monitor the activities of those operators, and to enforce the laws against operators who do not comply with the regulations. States would also have to develop intricate regulations relating to every road within its borders, based on which roads need speed limits, size and weight restrictions, or travel restrictions to be safe. It is not within the purview of Congress to displace a state's accountability to its electorate by dictating how that state will expend its own resources. *Printz v. United States*, 521 U.S. at 919-20.

The Sixth Circuit's interpretation of the Safety Exception ignores fundamental precepts of statutory construction and federalism because it will "upset the usual constitutional balance of federal and state powers," *New York v. United States*, 505 U.S. at 170, quoting *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991), and because the Court must avoid the constitutional problems created by such interpretation. *Id.*, citing *Edward J. DeBartolo Corp. v. Florida Gulf Coast Building & Construction Trades Council*, 485 U.S. 568, 575 (1988). The only interpretation of the Safety Exception that will avoid constitutional problems allows

states to delegate to local governments the safety regulatory authority of motor vehicles.

CONCLUSION

Amici urge the Court to reverse the decision of the court below.

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